

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Section 257 Proceeding to )  
Identify and Eliminate )  
Market Entry Barriers for )  
Small Businesses )

GN Docket No. 96-113

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COMMENTS OF THE  
ASSOCIATION OF DIRECTORY PUBLISHERS

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23 August 1996

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## **SUMMARY**

### **SUBSCRIBER LIST INFORMATION:**

- IS THE FOUNDATION OF YELLOW PAGES PUBLISHING
- IS AN ESSENTIAL FACILITY WITHOUT WHICH A TELEPHONE DIRECTORY CAN NOT BE PUBLISHED

### **LECS UTILIZE THEIR MONOPOLY CONTROL OVER SUBSCRIBER LIST INFORMATION TO DISADVANTAGE SMALL, INDEPENDENT DIRECTORY PUBLISHERS BY:**

- REFUSING TO PROVIDE LISTING INFORMATION UNDER ANY TERMS
- SETTING PRICES FOR LISTING INFORMATION OVER TWENTY TIMES HIGHER THAN THAT DETERMINED TO BE "REASONABLE" BY STATE AND OTHER REGULATORS
- DECLINING TO PROVIDE UPDATES OR OTHER CRUCIAL INFORMATION

### **SECTION 257 SHOULD BE USED TO REMOVE ENTRY BARRIERS AND PROMOTE COMPETITION IN THE DIRECTORY PUBLISHING MARKET BY REQUIRING LECS TO PROVIDE LISTING INFORMATION:**

- ON A TIMELY BASIS
- WITH PRIMARY BUSINESS CLASSIFICATIONS
- UNBUNDLED ON A GEOGRAPHIC, TEMPORAL, AND CLASS OF BUSINESS BASIS
- ON AN UPDATED BASIS
- SUFFICIENT TO ALLOW THE DELIVERY OF DIRECTORIES TO NON-PUBLISHED AND NON-LISTED SUBSCRIBERS
- AT A PRICE BASED ON INCREMENTAL COSTS

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**Attachment A: Proposed Rules To Implement Section 257 and  
Section 222(e)**

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COMMENTS OF THE ASSOCIATION OF DIRECTORY PUBLISHERS

The Association of Directory Publishers ("ADP"), by its attorneys, hereby submits its Comments in the above-captioned proceeding.<sup>1</sup>

I. BACKGROUND.

ADP is a ninety-eight year-old international trade association representing the interests of "independent" telephone directory publishers, that is, publishers of white and yellow pages telephone directories that compete with the Regional Bell Operating Companies and other local exchange carriers ("LECs") in the sale of telephone directory advertising (primarily yellow pages classified advertising). ADP's more than 200 members -- most of which are "small businesses" -- produce telephone directories serving communities throughout the United States.

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<sup>1</sup> Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, GN Docket No. 96-113, *Notice of Inquiry*, FCC 96-216 (rel. May 21, 1996) ("NOI").

**A. Subscriber List Information Is The Foundation Of  
Classified Telephone Directory Publishing.**

Classified telephone directory advertising--basically, yellow pages advertising--has grown to a more than \$10 billion per year industry generally because it is one of the primary means by which local (generally, small) businesses reach their customers. As of 1995, local exchange carriers ("LECs") controlled 93.6 percent of the yellow pages directory market.<sup>2</sup> This market has "long been an enormously profitable business" for the LECs;<sup>3</sup> their large profits and overwhelming market share are attributable, in large measure, to the fact that the LECs -- as the sole providers of telephone service in their areas -- have monopoly control over subscriber list information: the name, address, telephone number, and business heading for each subscriber.<sup>4</sup>

As noted by the Supreme Court, LECs obtain subscriber list information "quite easily" because a person or business must supply their name and address in order to obtain telephone service.<sup>5</sup> For each business customer, LECs simply place the

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<sup>2</sup> See "Yellow Pages Revenues Expected To Surpass \$10 Billion in 1996," Business Wire (April 2, 1996).

<sup>3</sup> See Christopher C. Pflaum, Ph.D., Competitive Issues Relating To Subscriber Listing Information: A Brief Empirical Economic Overview at 3 (June 1996) ("Pflaum"), appended to ADP's comments in CC Docket No. 96-115.

<sup>4</sup> Id. at 3 (noting LECs' large profit margins).

<sup>5</sup> See Feist Publications v. Rural Tel. Serv. Co., 499 U.S. 340, 343 (1991) (striking down copyright protection for listings contained in telephone white pages).

subscriber list information under the appropriate yellow pages heading, such as "restaurants", "painters", "stereo supplies", etc.<sup>6</sup> To ensure freshness, LECs place subscriber list information into a computer database where it is "constantly revised" and "compiled"<sup>7</sup> as for example, when a new business or family moves into an area or when service is disconnected. Consequently, unless an independent directory publisher has accurate (no errors), timely (new businesses included and closed businesses excluded) and complete (no omissions) listings, it will be unable to compete with LEC-affiliated publishers as its directory will be of little value to end users.

**B. Local Exchange Carriers Employ Various Exclusionary Tactics To Maintain Their Domination Of The Yellow Pages Directory Market.**

The Telecommunications Act of 1996 added new Section 222(e) to the Communications Act which requires LECs to license subscriber list information. Nevertheless, some LECs still refuse to sell or otherwise license such information to

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<sup>6</sup> Most yellow pages adhere to a standardized heading format proposed by the Yellow Pages Publishers Association (formerly known as the National Yellow Pages Service Association). See Michael F. Finn, *"Just the Facts, Ma'am": The Effect of the Supreme Court's Decision in Feist v. Rural Telephone Service Co. on the Colorization of Black and White Films*, 33 Santa Clara L. Rev. 859, 878 (1993).

<sup>7</sup> See Hutchison Tel. Co. v. Fronteer Directory Co., 770 F.2d 128 (8th Cir. 1985). U S WEST has indicated that "up-to-date basic listing information is easily and relatively inexpensively gathered" and is "compile[ed] and continuously update[d]." See Exhibit 3 to ADP comments in CC Docket No. 96-115.

independent directory publishers.<sup>8</sup> Of those LECs offering subscriber list information, many impose pricing and other terms that are so unreasonable as to constitute a virtual refusal to deal. As of May 1996, for example, LECs were charging prices more than twenty times greater than the 4-5 cents per listing price determined to be a "reasonable" price per listing by both the Florida Public Service Commission and the Canadian Radio-Television and Telecommunications Commission.<sup>9</sup>

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<sup>8</sup> The City of Fairbanks, Alaska -- which owns and operates a local exchange carrier -- has spurned repeated requests for subscriber list information because (1) the FCC had yet to promulgate rules, (2) its workforce was too busy, and (3) it might be able to obtain an exemption from the Alaska PUC. See Exhibit 10 to ADP Reply Comments in CC Docket No. 96-115. See also Letter from David C. Henny, Whidbey Telephone Co., to Mac MacGregor, MacGregor Publishing Co. (April 3, 1996) ("[W]e cannot, at this time, commit to providing you with [subscriber list information].") (Exhibit 7 to ADP's Comments in CC Docket No. 96-115).

<sup>9</sup> Almost four months after the passage of Section 222(e), ALLTEL was charging 98 cents per listing plus a \$500 administrative fee. See Exhibit 6 to ADP's Reply Comments in CC Docket No. 96-115. At the same time, the Molalla Telephone Co. was charging 75 cents per listing plus several hundred dollars in fees. See Exhibit 7. to ADP's Reply Comments in CC Docket No. 96-115.

In *Great Western*, a case upholding a jury verdict that Southwestern Bell violated the antitrust laws in its quest to eliminate a competing independent directory publisher, the Fifth Circuit noted that Southwestern Bell "tripled its subscriber list information prices twice within four years until they reached \$0.50 cents per listing while simultaneously lowering the price it charged advertisers by 40 percent." See Great Western Directories, Inc. v. Southwestern Bell Tel. Co., 63 F.3d 1378, 1388 (5th Cir. 1995), vacated and remanded in part on other grounds, 74 F.3d 613 (5th Cir. 1996). The outrageousness of the \$0.50 per listing price was made plain when Southwestern Bell admitted that its costs for providing subscriber list information were less than one cent per listing and that the



Other exclusionary practices include refusing to provide updated subscriber list information (e.g., change of addresses, new businesses, discontinued businesses, etc.).<sup>10</sup> Southwestern Bell and other LECs have demanded that, as a condition of obtaining any subscriber list information, independent directory publishers buy subscriber list information for geographic areas far in excess of those desired by the publisher.<sup>11</sup> As noted by the Fifth Circuit, such actions "substantially increase the fixed costs" for small independents.<sup>12</sup>

**II. SECTION 257 IS AN APPROPRIATE VEHICLE FOR THE COMMISSION TO PROMOTE COMPETITION IN THE DIRECTORY PUBLISHING MARKET BY ELIMINATING ENTRY BARRIERS IMPOSED BY LECS.**

Section 257 is an appropriate mechanism to implement regulations designed to assist small directory publishers in competing with LECs and their affiliated publishers. Section 257 requires the Commission within 15 months after promulgation to

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price increases were "expense driven attacks" on its competitor.

<sup>10</sup> GTE, which subsequent to the enactment of Section 222(e) offered to provide updates, has yet to specify when such updates will be available or on what terms.

<sup>11</sup> The Canby Telephone Company has reserved the right to "require [independent directory publishers] to purchase the entire North Williamette Valley directory in order to obtain the prefixes desired." See Exhibit 8 to ADP's Comments in CC Docket No. 96-115.

<sup>12</sup> See Great Western, 63 F.3d at 1387. A more complete discussion of the harms stemming from the unfair raising of rivals' costs (increased prices to consumers, decreased competition, etc.) may be found in Steven C. Salop and David T. Scheffman, Raising Rivals' Costs, 73 Am. Econ. Rev. 267 (1983).

conduct a proceeding "for the purpose of identifying and eliminating . . . market entry barriers for entrepreneurs and other small businesses" concerning the provision of telecommunications and information services.<sup>13</sup> In implementing Section 257, the Commission must "promote . . . vigorous economic competition, technological advancement, and promotion of the public interest."<sup>14</sup>

As discussed, independent directory publishers -- most of which are "small businesses" -- have been stymied and frustrated in their attempts to enter, expand, or compete in the telephone directory publication market. For that reason, Congress, in the 1996 Act, added new Section 222(e) to the Communications Act which requires LECs to provide subscriber list information on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format. Given that many independent directory publishers are small businesses, both Representative Paxon and Representative Barton believed that the instant Section 257 proceeding would cover conduct precluded by Section 222(e).<sup>15</sup> Similarly, the NOI states expressly that "proposals [for the elimination of market entry

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<sup>13</sup> See 47 U.S.C. Section 257(a).

<sup>14</sup> See 47 U.S.C. Section 257(b).

<sup>15</sup> See 142 Cong. Rec. E184-03 (daily ed. Feb 6, 1996) (statement of Rep. Paxon); 142 Cong. Rec. H1145-06 at H1160 (daily ed. Feb. 1, 1996) (statement of Rep. Barton).

barriers] may address . . . sale of subscriber lists to independent directory publishers."<sup>16</sup> Thus, the Commission should recognize Section 257 as a mandate to eliminate the types of market entry barriers created by LECs through their monopoly control over subscriber list information and adopt rules that meaningfully implement Section 222(e).

**A. LECs Possess Monopoly Control Over Subscriber List Information Which Is An "Essential Facility" For The Publication Of Telephone Directories.**

Under the antitrust laws, a facility is "essential" if a potential competitor could not feasibly duplicate the facility and if refusal of access precludes entry into the market.<sup>17</sup> Independent directory publishers have no practical alternative means of access to subscriber listing information<sup>18</sup> and cannot economically gather such large amounts of information from the subscribers themselves.<sup>19</sup> Indeed, both Southwestern Bell<sup>20</sup> and U

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<sup>16</sup> See NOI at 28, paragraph 41.

<sup>17</sup> See, e.g., City of Anaheim v. Southern Cal. Edison Co., 955 F.2d 1373, 1380 (9th Cir. 1992); Hecht v. Pro-Football, Inc., 570 F.2d 982, 992 (D.C. Cir. 1977), cert. denied, 436 U.S. 956 (1978) (holder of essential facility has the power to prohibit entry to the market).

<sup>18</sup> The Supreme Court has noted that an independent directory publisher "is not a telephone company, let alone one with monopoly status, and therefore lacks independent access to any subscriber information." See Feist, 499 U.S. at 342.

<sup>19</sup> See Pflaum at 8 (subscriber list information is a "quintessential 'essential facility'").

<sup>20</sup> In 1987, the then-President and CEO of Southwestern Bell Yellow Pages, Inc. stated that "it is not possible for a directory publisher to truly compete with a telephone company affiliated directory publisher without access on basically equal terms to [listings which] is an essential

S WEST<sup>21</sup> have characterized subscriber list information as an essential facility and admitted that without being supplied subscriber list information from LECs, directory publishers cannot enter the market and compete. In such circumstances, those controlling the essential facility must make it available to competitors on just and reasonable terms.<sup>22</sup>

Listing information is a literal byproduct of the provision of regulated telephone service, and is necessary to the provision of such service. The same considerations that led to the need to regulate the rates and terms for telephone service require regulation of the rates and terms for provision of subscriber list information. And, whereas there is an apparent trend toward competitive provision of local telephone service, there is no

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facility." See Exhibit 1 to ADP's Comments in CC Docket No. 96-115. That statement echoed an earlier affidavit by the then-Vice President and General Manager of Southwestern Bell Media, Inc. See Avery Affidavit. See Exhibit 2 to ADP's Comments in CC Docket No. 96-115.

<sup>21</sup> U S WEST has stated that listings are an essential facility or bottleneck and that it "would be virtually impossible" for a competing directory publisher to issue a directory without up-to-date listings supplied by LECs. See Exhibit 3 to ADP's Comments in CC Docket No. 96-115..

<sup>22</sup> See A.D. Neale, The Antitrust Laws of the United States of America: A Study of Competition Enforced By Law 67 (2d ed. 1970) (Where "facilities cannot practicably be duplicated by would-be competitors, those in possession of them must allow them to be shared on fair terms."). See also MCI Communications Corp. v. AT&T, 708 F.2d 1081, 1132-33 (7th Cir.) ("the antitrust laws have imposed on firms controlling an essential facility the obligation to make the facility available on non-discriminatory terms"), cert. denied, 464 U.S. 891 (1983).

corresponding prospect for the evolution of multiple, competitive sources for subscriber listing information.

ADP believes that bright line rules setting forth LECs' and directory publishers' rights and duties would conserve Commission resources by reducing the need for *ad hoc* Commission determinations over the suitability of terms and conditions. Regulatory resources are limited and whatever benefits might stem from a case-by-case analysis would be overwhelmed by strategic anticompetitive behavior on the part of the LECs.<sup>23</sup> Thus, Commission rules are required to ensure that Section 257 leads to "vigorous economic competition, technological advancement, and promotion of the public interest."<sup>24</sup>

**IV. THE COMMISSION'S RULES FOR IMPLEMENTATION OF SECTION 257 MUST: (1) REQUIRE LECs TO PROVIDE SUBSCRIBER LIST INFORMATION ON A TIMELY BASIS; (2) MANDATE THE PROVISION OF PRIMARY BUSINESS CLASSIFICATIONS; (3) UNBUNDLE LISTING INFORMATION; (4) COMPEL LECs TO PROVIDE UPDATES; (5) ENSURE THAT COMPETING DIRECTORY PUBLISHERS RECEIVE INFORMATION SUFFICIENT TO PERMIT DIRECTORY DELIVERY TO NON-PUBLISHED AND NON-LISTED SUBSCRIBERS; AND (6) SET A PRICE FOR SUBSCRIBER LIST INFORMATION BASED UPON INCREMENTAL COSTS.**

ADP submits herewith draft rules to implement Section 222(e). These same draft rules were submitted in CC Docket No. 96-155. ADP highlights below some of the salient provisions of these proposed rules.

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<sup>23</sup> For example, LECs could price listings or impose other onerous conditions up to the point at which a directory publisher would seek legal redress.

<sup>24</sup> See 47 U.S.C. Section 257(b).

**A. "Timely" Means Within 20 Days.**

Many LECs refuse to respond to subscriber list information requests for weeks or months. For example, despite repeated requests following the passage of Section 222(e), GTE has continually delayed offering terms for an update service.<sup>25</sup> Consequently, ADP believes that requiring LECs to fill subscriber list information requests within 20 days is reasonable and would eliminate LEC's ability to hinder competition by delaying the provision of subscriber list information. Of course, the subscriber list information to be provided must be up-to-date.

**B. Primary Business Classifications Must Be Supplied As Part of Subscriber List Information.**

Pursuant to the language of Section 222(e)-(f), the Commission should declare that subscriber list information includes a subscriber's name, address, telephone number, and -- in the case of a business subscriber -- the primary advertising classification, which refers to the yellow pages business heading under which the subscriber has chosen to be listed. For example, the primary advertising classification for Mayflower Van Lines, would presumably be in the nature of "Moving Companies", "Van Lines", or "Moving and Storage", as chosen by the subscriber.

Some telephone companies have adopted the evasive practice of delegating the responsibility for recording primary classification information to employees nominally employed by the

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<sup>25</sup> See Exhibit 11 to ADP's Reply Comments in CC Docket No. 96-155.

telephone company's directory affiliate. Since the information is necessary to fulfill the telephone company's tariff obligation to furnish a "free" yellow pages listing as part of business telephone service, such delegation should not diminish the telephone company's obligation to provide primary business classification information to independent directory publishers. The Commission's rules should so specify, because the omission of that requirement would frustrate Congress' desire for increased directory competition (and its associated public interest benefits, such as "cheaper, more innovative, more helpful directories" for the public).

**C. Subscriber List Information Must Be Unbundled On A Geographic, Class Of Service (Business Or Residential) And Temporal Basis.**

Carriers should no longer be allowed to force directory publishers to purchase listings for areas other than those requested by the publisher.<sup>26</sup> Nor should carriers be allowed to require directory publishers to purchase both business and residential listings as a condition of obtaining any listings whatsoever.<sup>27</sup> Such requirements are inefficient, anticompetitive, and evidence the unequal bargaining power held by independent directory publishers. Independent publishers must have the opportunity to obtain only the subscriber list information that they desire.

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<sup>26</sup> See, e.g., Great Western Directories, 63 F.3d at 1388.

<sup>27</sup> See id. (noting that Southwestern Bell imposed such a condition).

Nor should carriers be allowed to force publishers to repurchase subscriber list information anew each year. This too stems from LECs' overwhelming bargaining power as it results in their receiving payments for substantially the same subscriber list information every year. Rather, directory publishers should be allowed to purchase updated subscriber list information and modify their previously purchased lists based upon the updates, e.g., add the new listings and change of addresses and delete the canceled listings. There is no reason for independent directory publishers to be required to repurchase essentially the same listings every year.

**D. LECs Must Provide Updates to Competing Directory Publishers.**

As a practical matter, updates are critical to directory publishers, both to maintain the accuracy of their overall database and because (1) people moving into a new community are most likely to refer to, and benefit from, yellow pages advertising and (2) new businesses are particularly likely to need such advertising. For those reasons, LECs provide updated information to their own affiliated publishers.

Without updates, independent directory publishers will have an inferior product because their directories will reach a more limited audience than affiliated directories. The availability of updated information would have the added benefit of ending many LECs' anticompetitive practice of forcing competing publishers to pay for all listings anew every year rather than buying an initial list and maintaining it through updates.



**E. Unpublished Information Should be Made Available To Directory Publishers for Use in Delivery.**

LECs typically refuse to provide independent directory publishers with information concerning non-listed or non-published subscribers. That refusal disadvantages independent publishers because (1) LECs provide their affiliated publishers with information sufficient to allow the publisher to provide such subscribers with the LECs' directories and (2) LEC-affiliated publishers trumpet the fact that their directories reach all subscribers as compared to directories published by their competitors.<sup>28</sup> To ensure that independent directory publishers are no longer disadvantaged, the Commission should require that LECs provide directory publishers with information sufficient to enable the delivery of a telephone directory to the subscriber's residence or place of business.<sup>29</sup> Of course, the use of such information would be limited to directory delivery purposes.

**F. Subscriber List Information Must Be Provided At A Price At Or Approximating The Incremental Cost Of Providing The Information.**

In the years preceding the 1984 Bell System divestiture, there were no great controversies over subscriber list

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<sup>28</sup> GTE advertises that its directory is mailed within 24 hours of any new phone installation. See Exhibit 9 to ADP's Comments in CC Docket No. 96-115.

<sup>29</sup> ADP advocates access to the names of non-listed or non-published subscribers only to the extent that such "name" information is provided to LEC-affiliated directory publishers to facilitate the delivery of their directories.

information and listings were readily available for a penny or two per listing. Today, as a direct result of telephone companies' efforts to raise barriers to entry in to the classified telephone directory business, prices of \$.75 and \$1.00 per listing have become commonplace. Sections 257 and 222(e) are Congress's reaction to that sort of abuse.

Telephone companies have sometimes sought to justify gouging for subscriber list information by calling their prices "market based". Such claims are specious. As with any monopolized service, the "market" price is one that reflects the inelastic demand for the product and the consequent opportunity to charge well above cost. Public utility regulation exists precisely to prohibit that sort of market pricing. So, with respect to rates, the Commission should mandate that a "reasonable rate" is one based on the incremental cost of providing the materials.<sup>30</sup> That would accord with the views of at least two conferees to the Telecommunications Act of 1996.<sup>31</sup>

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<sup>30</sup> In other FCC proceedings, various LECs have expressed their agreement with the use of incremental costs. U S WEST, for example, has filed comments with the commission justifying certain rates on the grounds that "economic efficiency is maximized when prices are based on marginal (incremental) costs." See, e.g., Annual 1987 Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd 866, 878 ¶ 112 (Common Car. Bur. 1986) (characterizing U S WEST's filing).

<sup>31</sup> See Floor Statements of Rep. Paxon and Rep. Barton. Additionally, in an April 1996 Report, the Economic and Monetary Affairs Committee of the European Parliament declared that subscriber list information should be made available to competing directory publishers at marginal cost.

Recent data indicates that the incremental cost of subscriber list information is somewhere around \$0.004.<sup>32</sup> Other data confirm that the cost is certainly less than one cent.<sup>33</sup> Thus, any price much above one cent a listing would be unreasonable. Current prices in the \$0.15 to \$1.00 range are plainly abusive and unlawful, and the Commission should expressly so state.

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<sup>32</sup>     See Pflaum at 11.

<sup>33</sup>     See id. at 12 n.2.

## VI. CONCLUSION

For the foregoing reasons, the Association of Directory Publishers urges the Commission to promulgate--in this proceeding or in CC Docket No. 96-115--the accompanying draft rules concerning the provision of subscriber list information.

Respectfully submitted,

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23 August 1996

## **ATTACHMENT A**

**ASSOCIATION OF DIRECTORY PUBLISHERS'**

**PROPOSED RULES TO IMPLEMENT SECTION 257 AND SECTION 222(e)**

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§ 64.XXX1. SUBSCRIBER LIST INFORMATION. (a) Any telecommunications carrier that provides telephone exchange service shall provide subscriber list information to directory publishers on a timely, unbundled basis and on nondiscriminatory and reasonable rates, terms, and conditions.

(b) "Subscriber list information" means any information identifying the names, addresses, telephone numbers, or primary classified advertising (line of business) classifications of a telecommunications carrier's subscribers (or any combination of such names, addresses, telephone numbers, or classifications) that such carrier has published, caused to be published, or accepted for publication in any form of telephone directory (including, but not limited to directories produced in printed, electronic, or optical form).

(c) "Timely" provision of subscriber list information means (i) the provision of up-to-date subscriber list information within not more than 20 (twenty) days of a request and (ii) the provision of updated and changed information necessary for directory publishers to maintain accurate up-to-date databases and to identify newly established businesses and residences for purposes of advertising sales and delivery of directories. Such data updates shall be made available on a regularly recurring basis (e.g., weekly, monthly).

(d) "Unbundled" provision of subscriber list information means the provision of only such information as is requested by the requesting publisher. For example (but not by way of limitation), subscriber list information should be available separately for business and residence subscribers, or sorted by reasonable geographic criteria such as prefixes or postal codes.

Subscriber list information shall also be unbundled on a temporal basis such that a listing, once purchased, need not be repurchased each time a directory publisher desires to publish a directory.

(e) "Nondiscriminatory" provision of subscriber list information means the provision of such information to all publishers on rates, terms, and conditions that, in practical effect, confer no advantage on the telecommunications carrier's affiliated or sponsored directory publisher over competing or other directory publishers.

(f) "Reasonable" rates, terms, and conditions for the provision of subscriber list information means:

(i) rates that do not exceed the telecommunications carrier's incremental cost to provide the subscriber list information, including the actual cost of computer programs reasonably necessary to provide the information to the publisher, the direct costs associated with provision of the information to the publisher, and a reasonable return, and

(ii) terms and conditions that enable efficient and economical use of subscriber list information by directory publishers for production of directories.

(g) Format: Subscriber list information must be provided in a format that is convenient, usable, and reasonably feasible, both for telecommunications carriers to provide and for directory publishers to utilize. Subscriber list information should be available in both a "camera ready" format and in an electronic medium that is generally available (e.g. ASCII).

(h) Complaints regarding the provision of subscriber list information and the rates, terms, and conditions for such provision may be brought before the Commission by the filing of a complaint. The complaint must be in writing and must identify the complainant and describe with reasonable clarity the act, omission, practice, rate, term, or condition alleged to be unlawful or unreasonable. The telecommunications carrier shall have 30 days from service of the complaint in which to file a written response, which must be served on the complainant. The burden shall be on the telecommunications carrier to prove that the challenged act, omission, practice, rate, term, or condition is lawful. Within 20 days after service of a response, the complainant may file and serve a reply which shall be responsive to matters contained in the response and shall not contain new matters. Failure to reply will not be deemed an admission of any allegations contained in the response.

(i) To the extent that a state public service commission actively supervises, by rule or tariff, the provision of subscriber list information, such rules and tariffs shall be consistent with Section 222(e) of the Communications Act of 1934, *as amended*, and these rules. Complaints regarding violation of a state commission's rule, order, or tariff governing the provision of subscriber list information to directory publishers, shall be brought before the state commission with a direct appeal to the Commission.

(j) Subscriber list information pertaining to a subscriber to a telecommunications carrier's services that requests that such subscriber list information not be published in directories published by or for the carrier need not be provided to directory publishers except that, if the telecommunications carrier uses such unlisted or unpublished name and address information, or permits the use of unpublished name and address information by an affiliate or others, for the purpose of delivering directories, such unpublished information shall be furnished on reasonable and nondiscriminatory terms and conditions to all directory publishers that request it for the sole and exclusive purpose of enabling the recipient directory

publisher to cause its directories to be delivered to the subscriber.

(k) A telecommunications carrier may require a person requesting subscriber list information pursuant to this section to certify in writing that the requesting person will use the information solely in connection with publishing directories in any format (including, but not limited to, soliciting and selling advertising in such directories, compiling and publishing subscriber listings in alphabetical, classified, or other arrangements, delivering directories, and rendering bills for advertising and other related services). If a telecommunications carrier believes that the certification is erroneous or untrue, it may seek permission from the Commission (or, if the provision of the subscriber list information at issue is actively regulated by a state public service commission by rule or tariff, from that commission) to refuse future provision of such information to the requesting person. Subscriber list information shall not be withheld during the pendency of any such request for permission to refuse the provision of information.